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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/647,251	08/26/2003	Masato Yoshikawa	Q77129	2079
7590	11/15/2004		EXAMINER	
SUGHRUE, MION, ZINN, MACPEAK & SEAS 2100 Pennsylvania Avenue, N.W. Washington, DC 20037-3202			CHACKO DAVIS, DABORAH	
			ART UNIT	PAPER NUMBER
			1756	

DATE MAILED: 11/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/647,251	YOSHIKAWA ET AL.	
	Examiner	Art Unit	
	Daborah Chacko-Davis	1756	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 27 July 2004.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 2-4 and 20-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 22 is/are allowed.
- 6) Claim(s) 2-4, 20-21, 23-25 is/are rejected.
- 7) Claim(s) 26-28 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ . | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 2-4, 20-21, and 23-25, are rejected under 35 U.S.C. 103(a) as being unpatentable over U. S. Patent No. 4,846,541 (Miura et al) in view of U. S. Patent No. 5,346,600 (Nieh et al) further in view of U. S. Patent No. 5,741,403 (Tenhover et al).

Miura, in col 1, lines 40-43, in col 2, lines 38-56, and lines 61-64, in col 3, lines 25-35, and in col 4, lines 38-39, discloses a method for controlling the refractive index of a dry plating film that comprises providing a silicon carbide sinter target (starting source), and subjecting the silicon carbide to dry plating (sputtering) while controlling the concentration of the reactive gas (oxygen-containing), and controlling the electric power (maintaining the power at 200 Watts) to the target, thereby forming a thin film primarily made of silicon carbide that has a refractive index ranging from 1.4 - 3.4.

Miura, in col 2, lines 49-52, and in col 3, lines 28-30, discloses that the silicon carbide used as the target (starting source) consists essentially of a silicon carbide sintered product (claims 2, 4, and 20). Miura, in col 1, lines 20-34, and in col 2, lines 19-54, discloses a method of making a dry plating film (built-up) comprising providing a silicon carbide target (starting source), and subjecting the target to a deposition process (dry plating process) while changing (adjusting) the concentration of the reactive gas during

deposition thereby producing a thin SiC containing film of varying refractive indices (1.4 – 3.4) (claim 25). Miura, in col 3, lines 32-34, and lines 57-59, and in col 4, lines 10, and 14 discloses that the ratio of the reactive gas (oxygen) is within the range of 0 to 20% (claim 3).

The difference between the instant claims and Miura is that Miura does not disclose the sintering of a homogenous mixture that has a density of 2.9g/cm³, and the homogenous mixture is made of silicon carbide powder and a nonmetallic sintering aid. Miura does not disclose that the reactive gas includes a nitrogen-containing gas. Miura does not disclose that the non-metallic sintering aid is selected from coal tar pitch, phenolic resins, furan resins, epoxy resins, glucose, sucrose, cellulose and starch (claim 21). Miura does not disclose that the SiC thin film formed comprises a mixture of SiC, Si₃N₄, SiN, and SiC_xN_y (claim 23). Miura does not disclose that the SiC film formed comprises SiC_xN_y (claim 24).

Nieh, in col 6, lines 33-39, in col 8, lines 59-65, in col 10, lines 32-35, discloses that in sputter deposition processes (SiC) the reactive gases required for creating the plasma includes an inert gas, and a reactive gas such as nitrogen resulting in a film that comprises SiC, and SiC_xN_y.

The difference between the claims and the combination of Miura in view of Nieh is that the combination does not disclose the sintering of a homogenous mixture that has a density of 2.9 g/cm³, and is made of silicon carbide powder and a non-metallic sintering aid.

Tenhover, in col 5, lines 53-64, in col 8, lines 14-29, and in col. 9, lines 1-30, discloses the sintering of a homogenous mixture of silicon carbide powder and a non-metallic sintering aid to produce a sintered silicon carbide target that has a density of 2.9g/cm³. Tenhover, in col 5, lines 55-62, discloses that a source of an amorphous carbon, an organic resin binder, various dispersants, lubricants or diluents can be used as sintering aids.

Therefore, it would be obvious to a skilled artisan to modify Miura by employing nitrogen as the reactive gas as taught by Nieh because Nieh, in col 10, lines 32-35, discloses that it is advantageous to use nitrogen as the reactive gas in reactive sputtering. Although, Miura does not teach that the refractive indices throughout the film varies in a particular waveform, Miura teaches that the film produced has varying indices of refraction throughout the thickness of the film and therefore the SiC film produced by Miura would inherently possess a wave form of thickness variation. Therefore, it would be obvious to a skilled artisan to modify Miura by employing the method of sintering as taught by Tenhover because Miura in col 3, line 29, line 32, and line 58, discloses that a sintered sputter target is preferably used for sputter depositing a silicon carbide film.

Allowable Subject Matter

3. Claim 22 is allowable over the prior art of record (U. S. Patent No. 4,846,541 (Miura et al), U. S. Patent No. 5,346,600 (Nieh et al), and U. S. Patent No. 5,741,403 (Tenhover et al)) because the prior art of record does not disclose a method of sputtering a SiC source with a reactive gas to form a thin film, said thin film having

different refractive indices that changes in a wave form selected from a triangular wave and sine wave in the thickness direction thereof.

4. Claims 26-28, are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

5. Applicant's arguments filed on July 27, 2004, have been fully considered but they are not persuasive. The 103 rejection made over claims 2-4, 20-21, and 23-25, is maintained. Applicant's arguments, see amendment, filed July 27, 2004, with respect to claims 22, and 26-28, have been fully considered and are persuasive. The 103 rejection of claim 22 has been withdrawn.

A) Applicants argue that neither Miura nor Nieh teaches the use of nitrogen as the reactive gas during reactive sputtering.

Miura teaches the use of the same sputtering source, SiC. However, Miura does not teach that the reactive gas used during sputtering is nitrogen. Nieh is depended upon to disclose the use of nitrogen as the reactive sputter gas to form the thin film (see column 10, lines 39-40).

B) Applicants argue that Nieh employs nitrogen for the formation of metal nitrides, and not SiC_xN_y (silicon carbonitrides), and therefore the teachings of Nieh are irrelevant to the objectives and processes of Miura.

Although Nieh teaches the use of nitrogen containing gases or nitrogen in the formation of metal nitrides, Nieh, in col 10, lines 39-40, also specifically teaches that nitrogen can also be used as the reactive sputter gas in the formation of metal carbonitrides. Therefore, Nieh is relevant to the processes and objectives of the Miura.

C) Applicants argue that Tenhover, in col 5, line 58, discloses only boron, aluminum, and beryllium as sintering aids and not the claimed materials.

Tenhover does not teach the use of beryllium as the sintering aid. Tenhover, in col 5, lines 58-60, teaches that in addition to either boron or aluminum, an organic resin or a source of carbon can be used as a non-metallic sintering aid.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daborah Chacko-Davis whose telephone number is (571) 272-1380. The examiner can normally be reached on M-F 9:30 - 6:00. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark F Huff can be reached on (571) 272-1385. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

dcd



November 9, 2004.



JOHN A. MCPHERSON
PRIMARY EXAMINER

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